SI Rajah & Anor v Dato Mak Hon Kam & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S7-22-599-1990
LIM BENG CHOON J
27 AUGUST 1993

Civil Procedure *— Jurisdiction — Declaration — Whether court has jurisdiction to grant orders when no relief is available — Rules of the High Court O 15 r 16 — Specific Relief Act 1950 s 41*

Civil Procedure *— Locus standi — Declaration and injunctive relief against members of society — Whether plaintiffs had locus standi to bring representative action — Whether personal action*

Societies *— Disputes regarding proper appointment of office bearers — Whether court had jurisdiction — Registrar of Societies conferred full powers to deal with matters concerning administration of societies — Societies Act 1966 s 16*

Civil Procedure *— Costs — Unnecessary expense — Delay in raising issues had caused other party to incur unnecessary costs — Each party to bear its own costs*

Words and Phrases *— 'Institution of proceedings' — Societies Act 1966 s 16*

The plaintiffs applied for declaratory orders that: (i) the first to ninth defendants were not members of the Peoples Progressive Party of Malaysia ('PPP'); (ii) the appointment of the first to ninth defendants as office bearers of PPP was null and void; (iii) the tenth and twelfth defendants, having resigned from their posts, had ceased to hold their respective posts; (iv) all the defendants be restrained from acting or holding out as office bearers or interfering with the affairs of PPP; and (v) the first plaintiff be appointed to attend to the day to day affairs of PPP under the supervision of the Registrar of Societies. The plaintiffs had earlier obtained an interim injunction to restrain all the defendants from doing the things mentioned above.

During the trial, the defendants raised a preliminary issue, namely, whether the plaintiffs were entitled to the prayers sought as: (i) the first plaintiff was a bankrupt and not holding an official post in the PPP; (ii) based on their own pleadings, both the plaintiffs were not entitled in law to the reliefs; (iii) as the action was not a representative action but a personal action, the plaintiffs had to show that their legal rights to any property had been infringed or that they had suffered loss of any office or deprivation of any status or interest pursuant to s 41 of the Specific Relief Act 1950; and (iv) the plaintiffs could not ask for the declarations by virtue of the Societies Act 1966. On the other hand, the plaintiffs contended that they need not go under s 41 of the Specific Relief Act 1950 but could rely on O 15 r 16 of the Rules of the High Court 1980 ('the RHC') to seek the declarations.

Held, dismissing the application:

(1) The declaratory power of the court was provided under s 41 of the Specific Relief Act 1950 and O 25 r 5 of the old Rules of the Supreme Court 1957, now O 15 r 16 of the RHC. Order 25 r 5 was clearly intended to allow declarations to be made where no relief was available and did not lay down any limits as to the declaratory powers of the court. What has been stated regarding the scope of O 25 r 5 can equally apply to O 15 r 16 of the RHC. Therefore, it was clear that s 41 of the Specific Relief Act 1950 was not exhaustive of declaratory relief and a declaration could be sought under O 15 r 16 of the RHC.

(2) There was nothing in the plaintiffs' statement of claim to indicate that this action was instituted as a representative action. Bearing in mind that the parties are bound by their pleadings, it was clear that this was the plaintiffs' personal action. What the plaintiffs did was merely to utilize their position as members of PPP and their official positions to sustain their standing to sue. Filing of the suit per se did not change a personal action into a representative action, particularly when the plaintiffs themselves did not aver in their statement of claim that they were suing on their own behalf and on behalf of the remaining members of PPP save the 12 members of PPP who are the defendants in this action.

(3) The court had no jurisdiction to grant the declarations prayed for as the Societies Act 1966 conferred on the Registrar of Societies full power to deal with matters concerning the function and the administration of societies. The proper forum to deal with the issues raised in this action was the Registrar of Societies.

(4) As there was no longer any relief, the statement of claim was rendered nugatory and removed from the court files. The interim injunction previously granted to the plaintiffs restraining the defendants was also revoked.

(5) Each party was ordered to bear its own costs because the defendants should have raised the preliminary issues if not before the trial then at least at the commencement of the trial. Instead, they had caused the plaintiffs to incur unnecessary expenses in proceeding with the trial.

Per curiam:

(1) The words ' institution of proceedings' in s 16 of the Societies Act 1966 do not mean the instituting of legal proceedings. They merely mean the instituting of any act or acts to settle the disputes. Otherwise, they would be out of context with all the other provisions of the Societies Act 1966 which policy is to confine matters regarding the registration, administration, and function of societies, to the Registrar of Societies.

(2) The amendment to the Societies Act 1966 vide Act 743/90 by introducing Pt IA entitled 'Provisions applicable to political parties only' has the effect of confining disputes arising from the election

of disqualified persons as office bearers of a political society within the said party itself.

[Bahasa Malaysia summary

Plaintif telah memohon untuk mendapatkan perintah deklarasi bahawa: (i) defendan pertama hingga kesembilan bukan ahli Parti Progresif Rakyat Malaysia ('PPRM'); (ii) perlantikan defendan pertama hingga kesembilan sebagai pemegang jawatan PPRM adalah tidak sah dan batal; (iii) defendan kesepuluh dan kedua belas, selepas meletak jawatan mereka, tidak lagi memegang jawatan masing-masing; (iv) kesemua defendan dihalang daripada bertindak atau mengemukakan diri sebagai pemegang jawatan atau bercampur tangan dalam urusan PPRM; dan (v) plaintif pertama dilantik untuk menjalankan urusan harian PPRM di bawah penyeliaan Pendaftar Pertubuhan. Plaintif terlebih dahulu telahpun memperolehi suatu injunksi interim untuk menghalang kesemua defendan daripada melakukan semua perkara yang tersebut di atas.

Semasa perbicaraan, defendan telah membangkitkan suatu isu permulaan, iaitu sama ada plaintif berhak mendapatkan perintah yang dipohon kerana: (i) plaintif pertama merupakan seorang bankrap dan tidak memegang jawatan rasmi dalam PPRM; (ii) berdasarkan pliding mereka sendiri, kedua-dua plaintif tidak berhak di sisi undang-undang untuk mendapat relief itu; (iii) oleh kerana tindakan ini bukanlah tindakan perwakilan tetapi suatu tindakan peribadi, plaintif perlu menunjukkan bahawa hak mereka di sisi undang-undang terhadap sebarang harta telah dilanggar atau mereka telah mengalami kehilangan jawatan atau perlucutan taraf atau kepentingan di bawah s 41 Akta Relief Tertentu 1950; dan (iv) plaintif tidak boleh memohon deklarasi tersebut disebabkan oleh Akta Pertubuhan 1966. Sebaliknya, plaintif menegaskan bahawa mereka ini tidak perlu menggunakan s 41 Akta Relief Tertentu 1950 tetapi boleh bergantung kepada A 15 k 16 Kaedah-Kaedah Mahkamah Tinggi 1980 ('Kaedah itu') untuk memohon deklarasi tersebut.

Diputuskan, menolak permohonan itu:

(1) Kuasa mahkamah untuk membuat deklarasi diperuntukkan di bawah s 41 Akta Relief Tertentu 1950 dan A 25 k 5 Kaedah-Kaedah Mahkamah Agung 1957 yang lama, yang sekarang merupakan A 15 k 16 Kaedah itu. Aturan 25 k 5 jelas bertujuan untuk membenarkan deklarasi dibuat di mana tidak ada relief dan tidak menetapkan sebarang had mengenai kuasa mahkamah untuk membuat deklarasi. Apa yang telah dikatakan tentang ruang lingkup A 25 k 5 terpakai kepada A 15 k 16 Kaedah itu. Oleh itu, jelaslah bahawa s 41 Akta Relief Tertentu 1950 tidak menyeluruh mengenai relief bersifat deklarasi dan suatu deklarasi boleh dipohon di bawah A 15 k 16 Kaedah itu.

(2) Tidak terdapat apa-apa di dalam pernyataan tuntutan plaintif untuk menunjukkan bahawa tindakan ini telah dimulakan sebagai

suatu tindakan perwakilan. Memandangkan bahawa plaintif terikat oleh pliding mereka, adalah jelas bahawa ini merupakan tindakan peribadi plaintif. Apa yang dilakukan oleh plaintif adalah menggunakan kedudukan mereka sebagai ahli PPRM dan kedudukan rasmi mereka untuk mengekalkan pendirian mereka untuk mendakwa. Pemfailan suatu tindakan tidak dengan sendirinya menukar suatu tindakan peribadi kepada suatu tindakan perwakilan, lebih-lebih lagi apabila plaintif sendiri tidak menegaskan di dalam pernyataan tuntutan mereka bahawa mereka mendakwa bagi pihak mereka sendiri dan juga bagi pihak ahli PPRM yang tinggal kecuali 12 ahli PPRM yang merupakan defendan di dalam tindakan ini.

(3) Mahkamah tidak mempunyai bidang kuasa untuk memberikan deklarasi yang dipohon kerana Akta Pertubuhan 1966 memberi kuasa penuh kepada Pendaftar Pertubuhan untuk membicarakan hal berkenaan dengan fungsi dan pentadbiran pertubuhan. Forum yang betul untuk membicarakan isu yang dibangkitkan di dalam tindakan ini adalah Pendaftar Pertubuhan.

(4) Memandangkan tidak ada lagi sebarang relief, pernyataan tuntutan dijadikan tidak berguna dan disingkirkan daripada fail mahkamah. Injunksi interim yang telah diberikan kepada plaintif untuk menghalang defendan juga dibatalkan.

(5) Setiap pihak diperintahkan supaya menanggung kos sendiri kerana defendan sepatutnya membangkitkan isu permulaan itu sebelum perbicaraan dimulakan atau sekurang-kurangnya pada permulaan perbicaraan. Sebaliknya, mereka telah menyebabkan plaintif menanggung perbelanjaan yang tidak perlu dalam meneruskan dengan perbicaraan.

Per curiam:

(1) Perkataan 'memulakan prosiding' ('institution of proceedings') di dalam s 16 Akta Pertubuhan 1966 tidak bermakna memulakan prosiding undang-undang. Ia hanya bermakna memulakan sebarang tindakan untuk menyelesaikan pertikaian itu. Jikalau tidak, ia tidak selaras dengan konteks semua peruntukan lain di dalam Akta Pertubuhan 1966 yang berpolisi untuk membatasi perkara berkenaan dengan pendaftaran, pentadbiran dan fungsi pertubuhan kepada Pendaftar Pertubuhan.

(2) Pindaan kepada Akta Pertubuhan 1966 oleh Akta 743/90 dengan memperkenalkan Bah IA bertajuk 'Provisions applicable to political parties only' mempunyai kesan membatasi pertikaian yang timbul daripada perlantikan orang yang hilang kelayakan sebagai pemegang jawatan dalam sesuatu pertubuhan politik kepada parti itu sendiri.]

[*Editorial Note*: The plaintiffs have appealed to the Supreme Court vide Civil Appeal No 02–536–93.]

Notes

For cases on the court's jurisdiction to make declarations, see 2 *Mallal's Digest* (4th Ed) paras 1413–1416.

For a case on locus standi, see 2 *Mallal's Digest* (4th Ed) para 1510.

For a case on costs where unnecessary expenses are incurred, see 2 *Mallal's Digest* (4th Ed) para 764.

For a case on the requirements of a representative action, see 2 *Mallal's Digest* (4th Ed) para 1936.

Cases referred to

1 *Ellis v Duke of Bedford* [1899] 1 Ch 494 (refd)
2 *Dyson v A-G* [1912] 1 Ch 158; [1911] 1 KB 410 (refd)
3 *Guaranty Trust Co of New York v Hannay & Co* [1915] 2 KB 536 (refd)
4 *Russian Commercial and Industrial Bank v British Bank for Foreign Trade Ltd* [1921] 2 AC 438 (refd)
5 *Hanson v Radcliffe Urban District Council* [1922] 2 Ch 490 (refd)
6 *Ibeneweka v Egbuna* [1964] 1 WLR 219 (refd)
7 *Datuk Syed Kechik bin Syed Mohamed v Government of Malaysia & Anor* [1979] 2 MLJ 101 (refd)
8 *Fischer v Secretary of State for India* [1899] LR 26 Ind Ap 16 (refd)
9 *Ramaraghava Reddy v Seshu Reddy* AIR 1967 SC 436 (refd)
10 *Tan Sri Haji Othman Saat v Mohamed bin Ismail* [1982] 2 MLJ 177 (folld)
11 *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 (folld)
12 *Cotter v National Union of Seamen* [1929] 2 Ch 58 (refd)
13 *John v Rees & Ors* [1969] 2 All ER 274; [1969] 2 WLR 1294 (refd)
14 *Markt & Co Ltd v Knight Steamship Co Ltd* [1910] 2 KB 1021 (refd)
15 *Campbell v Thompson* [1953] 1 QB 445; [1953] 1 All ER 831; [1953] 2 WLR 656 (refd)
16 *North Eastern Marine Engineering Co v Leeds Forge Co* [1906] 1 Ch 324 (refd)
17 *Blackburn v A-G* [1971] 1 WLR 1037; [1971] 2 All ER 1380 (refd)

Legislation referred to

Code of Civil Procedure 1859 s 15 [Ind]
Specific Relief Act 1877 s 42 [Ind]
Societies Act 1966 s 16
Rules of the Supreme Court 1957 O25 r 5

Dato' Dominic Puthucheary (*KS Dass*, *Rajinder Singh* and *M Kayveas* with him) (*K Sila Dass & Partners*, *Ranjit Thomas & Kula*, *Kayveas & Co*) for the plaintiff.

Shahul Hameed (*Palanimmah Mutu* with him) (*Albar Zulkifli & Yap*, *Durai & Associates & Co*) for the defendants.

Cur Adv Vult

Lim Beng Choon J: This suit was instituted by the two plaintiffs on 26 August 1989 in which they are praying, inter alia, for three declaratory orders: (i) that the first to ninth defendants and each of them, were at all material times, and are, not members of the Peoples Progressive Party of Malaysia ('the PPP'); (ii) that the appointment of the first to the ninth defendants and each of them as office bearers of the PPP be declared null and void; and (iii) that the tenth and twelfth defendants and each of them having resigned from their respective posts of which they were elected at the triennial delegates conference of the PPP would cease to hold their respective posts. They are also praying for an order of court to restrain each and every one of the defendants from acting or holding out as office bearers and/or interfering with the affairs and/or from convening any meetings or extraordinary triennial delegates conference of the PPP. Finally, they pray for an order of court directing that, in the interim, the first plaintiff be appointed to attend to the day to day affairs of the PPP under the supervision of the Registrar of Societies ('the Registrar') or such other person or persons as may be appointed by the Registrar.

On 28 August 1989, the plaintiffs made an application by way of an ex parte summons-in-chambers for an interim injuction to restrain each and every one of the defendants from doing the things mentioned above. The application, however, was heard inter partes by me on 22 August 1991 and I granted the interim injunction prayed for, subject to the usual order as regards to damages to be paid to the defendants should it be found subsequently that the said injunction should not have been granted. The grounds of my judgment in this interlocutory matter are set out in my written judgment of 22 October 1991.

The trial of the case commenced on 8 January 1992 and proceeded until 11 May 1993, when the plaintiffs closed their case. Thereupon, counsel for the defendants orally applied to this court for leave to raise a preliminary issue pursuant to O 33 r 2 of the Rules of the High Court 1980 ('the RHC'). The preliminary issue as stated by the learned counsel was this: 'On the undisputed facts before this court, are the plaintiffs entitled to seek the various prayers that have been prayed for in the statement of claim in view of the proviso to s 41 of the Specific Relief Act 1950?'

Counsel for the plaintiffs strenuously objected to the defendant's application made at this late stage and said that the said application was, in fact, an abuse of the process of the court. Furthermore, the learned counsel quite rightly said that the plaintiffs were caught by surprise. I therefore adjourned the hearing until 13 May 1993 to enable counsel for the plaintiffs to look up the law on the preliminary issue.

The matter was fully argued before me by counsel of the respective parties on 13 May 1993. I do not propose to dwell on the arguments of counsel as I had given a written judgment on this preliminary issue on 24 May 1993. Suffice it to state that counsel for the defendants submitted that, even if the court were to look at the plaintiffs' case at its highest, in law the plaintiffs are not entitled to the reliefs asked for. Counsel also said that the facts relied on by the defendants, in raising the preliminary issue, were these:

1 As the first plaintiff is a bankrupt and not holding an official post in the PPP, he therefore has no right to ask for the reliefs sought.

2 In any event, based on their own pleadings, both the plaintiffs are not entitled in law to pray for and to obtain the reliefs as set out in their statement of claim.

On the other hand, counsel for the plaintiffs argued, inter alia, that:

1 The purported issue of law that the counsel for the defendants has raised is not in fact an issue of law, in that the statement of claim of 26 August 1989 raises matters based on antecedent events which took place in 1988 when the first plaintiff was not a bankrupt.

2 The bankruptcy issue relates only to a procedural matter and would be relevant only when he sought to implement or execute any court judgment.

3 In any event, the first plaintiff had, at an interlocutory proceeding, answered that he would obtain the sanction of the official assignee to proceed with the action. Having done so the defendants thereby allowed the trial of the case to be proceeded with without any objection.

On the grounds as set out in my written judgment of 24 May 1993, I allowed the defendants to raise the preliminary issue subject to my framing of the question to be raised on the said preliminary issue in this way:

> Even if the evidence adduced by or on behalf of the plaintiffs is accepted in toto and is unrebutted or unexplained by the defendants, they have not succeeded in showing that they were entitled to the reliefs they are claiming because, as a matter of law, they are not entitled to claim those reliefs.

Counsel for the respective parties have filed in their respective submissions on the preliminary issue and the relevant authorities in support thereof.

Shorn of the frills and trimmings of the arguments of counsel, the issue posed to this court is no more than this, viz whether this court has the jurisdiction and/or discretion to grant the declaratory orders prayed for by the plaintiffs. On the one hand, counsel for the defendants builds up the defendant's case on the contention that, as this action is not a representative action under O 15 r 12 of the RHC but the plaintiff's personal action, they must show that their legal rights to any property have been or will be infringed, or that they have suffered loss of any office or deprivation of any status or interest pursuant to s 41 of the Specific Relief Act 1950 which they have failed to do. In any case, so said counsel, the plaintiffs cannot ask for the declarations by virtue of the Societies Act 1966. Counsel for the plaintiffs, on the other hand, rests the plaintiffs' case on the contention that the plaintiffs need not go under the said s 41 for declaratory orders but can rely on O 15 r 16 of the RHC to ask for the declarations. Faced with these two rival contentions, it is useful at the outset to examine the legal principles governing the power of the court to grant a declaratory order.

It may be useful to trace the legal development of a declaratory action. In 1852, the Court of Chancery Act of England was enacted and it was provided in s 50 thereof that no suit should be open to objection on the ground that a mere declaratory decree or order was sought, and it would be lawful for the court to make a binding declaration of right without granting consequential relief.

In 1859, the said s 50 of the Court of Chancery Act was transplanted to India under s 15 of the Code of Civil Procedure 1859 ('the Code of 1859'), enacted in the same year, which stood as follows:

> No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the civil courts to make binding declarations of right without granting consequential relief.

The Code of 1859 was repealed by the Indian Code of Civil Procedure 1877 and the provisions as to declaratory decrees were transferred to s 42 of the Indian Specific Relief Act 1877. The terms of s 42 were not a precise reproduction of the provisions contained in the Code of 1859 and the said terms were expressed as follows:

> Any person entitled to any legal character or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief. Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title omits to do so.

In Malaysia, the declaratory power of the court was provided firstly, under s 41 of our Specific Relief Act 1950, which is a facsimile of s 42, now s 34, of the Indian Specific Relief Act, and secondly, under O 25 r 5 of our old Rules of the Supreme Court 1957, which was in pari materia with the same English rule providing for the declaratory power of the court under the English Rules of the Supreme Court 1883 which reads:

> No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby and the court may make binding declarations of right whether any consequential relief is or could be claimed or not.

The words 'whether any consequential relief is or could be claimed or not' — the only substantial difference between this rule and s 50 of the Court of Chancery Act 1852 — were clearly intended to allow declarations to be made where no relief was available. By this, an innovation of a very important kind was introduced — see *Ellis v Duke of Bedford*[1] per Lindley MR. The new rule was made in negative form and did not lay down any limits as to the declaratory power of the court or any principles governing the exercise of it. In consequence, the extent to which this power was to be exercised was largely left to the discretion of the court and it was, at least in England, favourably exercised right up to the early 20th century. Thus, in the famous case of *Dyson v A-G*,[2] certain notices, commonly known as Form 4, were issued by the Commissioners of Inland Revenue under the Finance Act (1909–1910) of England, requiring the plaintiff to make certain returns. The plaintiff alleged that the notices were unauthorized and illegal and sued the Attorney General for a declaration to this effect. It should be observed that no right of the plaintiff was or was threatened to be infringed and that the declaration was not asked for to ascertain any of his rights, but merely to establish in a negative way that he was under no obligation to

comply with the notice — indeed he had no cause of action in the conventional sense. In allowing the declaration, Fletcher Moulton LJ said at p 168:

> I think that an action thus framed is the most convenient method of enabling the subject to test the justifiability of proceedings on the part of permanent officials purporting to act under statutory provisions. Such questions are growing more and more important and I can think of no more suitable or adequate procedures for challenging the legality of such proceedings.

The principle enunciated in *Dyson*'s case[2] was applied in *Guaranty Trust Co of New York v Hannay & Co.*[3] There the plaintiffs were in a similar position to that of the plaintiff in *Dyson*'s case,[2] that is to say, they too were asking for a declaration that they were not obliged to refund sums paid to them by the defendants in respect of forged bills of lading. In other words, the plaintiff there too had no cause of action in the traditional sense, that is to say a cause of action upon which executory relief could be granted. The court however, decided by a majority (Pickford and Bankes LJJ; Buckley LJ dissenting) that it had jurisdiction to grant a declaration in the circumstances as stated by Pickford LJ at p 562: '... the effect of the rule is to give a general power to make a declaration whether there be a cause of action or not, and at the instance of any party who is interested in the subject matter of the declaration'.

Bankes LJ, however, injected a word of caution when he opined that although a cause of action was not necessary, nevertheless 'It is essential ... that a person who seeks to take advantage of the rule must be claiming relief,' and 'The claim for a declaration is *not* in itself a claim for relief.' (Emphasis added.)

What does the word 'relief' mean? The learned author, I Zamir, in his textbook on *The Declaratory Judgment* (1962) Stevens & Sons Ltd, attempted to explain the meaning of this word (see p 15):

> Probably all that he (Bankes LJ) meant was that a declaration could not be claimed for a mere sake of satisfying the curiosity of the plaintiff as to his rights but should only be claimed to relieve the plaintiff from a real difficulty, or in other words, for some useful purpose.

The learned author backed up his proposition with the judgment of the House of Lords delivered in the case of *Russian Commercial and Industrial Bank v British Bank for Foreign Trade Ltd*[4] where the house sanctioned a declaration given by the lower court even though that court had no power to grant consequential relief had such relief been asked for. It was suggested that the declaration was sanctioned as it would serve a useful purpose.

Now it is to be observed that when the learned author suggested that a declaration 'should only be claimed to relieve the plaintiff from a real difficulty or ... for some useful purpose,' it is to my mind more probable than not that what the learned author had in mind is not a real difficulty faced only by an individual or a useful purpose which would serve only an individual but rather a real difficulty faced by or a useful purpose beneficial to members of the public at large put in similar situation. Thus expressed,

his opinion comes into line with the instances cited by him on the declaratory power of the court. However that may be, the courts in England, at least, acknowledge the great efficiency of the declaratory judgment and are inclined to hold the view that the jurisdiction to grant declarations is extremely wide. It was therefore stated in *Hanson v Radcliffe Urban District Council*[5] [at p 507 per Lord Sterndale MR]: 'The power of the court to make a declaration ... is almost unlimited; I might say only limited by its own discretion'.

The Privy Council, however, adopted a more cautious approach in *Ibeneweka v Egbuna*[6] where Viscount Radcliffe in giving the decision of the Privy Council said [at p 225]:

> ... the power to grant a declaration should be exercised *with a proper sense of responsibility and a full realization that judicial pronouncements ought not to be issued unless there are circumstances that call for their making.* Beyond that there is no legal restriction on the award of a declaration. (Emphasis added.)

The aforementioned passage of Viscount Radcliffe's judgment in the *Ibeneweka*'s case[6] was cited in *Datuk Syed Kechik bin Syed Mohamed v Government of Malaysia & Anor*[7] by Lee Hun Hoe CJ (Borneo) (as he then was) where his Lordship went on to say [at p 107]: 'In granting a declaration the court has to consider the utility of the declaration claimed and the usefulness of the declaration on the one hand as against the inconvenience and embarrassment that may result on the other hand.'

It is to be noted that all the English and Malaysian cases cited above involve the declaratory jurisdiction of the court, the basis of which was O 25 r 5 of the English Rules of the Supreme Court and the same rule appearing in our then Rules of the Supreme Court 1957. But the provisions of the old O 25 r 5 have been imported word for word into the present O 15 r 16 of the RHC. It follows therefore that what has been stated regarding the scope of the old O 25 r 5 can equally apply to the present O 15 r 16 subject, however, to any statutory provisions limiting the power of the court to grant declaratory orders.

I now revert to the matter of s 41 of the Specific Relief Act 1950. It is useful first of all to refer to two Indian cases regarding the scope of s 42 (now s 34) of the Indian Specific Relief Act 1877 which is the precursor of s 41 of our Specific Relief Act 1950. The first case is *Fischer v Secretary of State for India*[8] where the Judicial Committee of the Privy Council held that s 42 of the Indian Specific Relief Act 1877 could not apply to the declaration sought in that case and that the said declaration was governed by the general provisions of the Civil Procedure Code like O 7 r 7. The second case, *Ramaraghava Reddy v Seshu Reddy*,[9] where Ramaswami J after reviewing the India case law on the matter of declaratory power of the court opined that:

> In our opinion s 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree *independently* of the requirements of that section. (Emphasis added.)

In Malaysia, our courts too adopted a similar stand. Thus, in *Tan Sri Haji Othman Saat v Mohamed bin Ismail*[10] it has been made clear that s 41 of the Specific Relief Act 1950 is not exhaustive of declaratory relief and a

declaration can be sought and made under O 15 r 16. This decision of Abdoolcader J (as he then was) was approved by the Supreme Court in *Government of Malaysia v Lim Kit Siang*.[11]

From the above discussions, I have no doubt at all that the first contention of the counsel for the defendants cannot be sustained.

I shall now turn to the alternative issue raised by the learned counsel for the defendants, viz the plaintiffs have no right to ask for the declaratory order on the ground that they are not asking the same for the benefits of either PPP or its members. This action is the plaintiff's personal action and not a representative action and PPP is not made a party to it. More importantly, the learned counsel stressed that the first plaintiff is now a bankrupt and a receiving order had been made against him. He is an undischarged bankrupt and has no right to pursue this action.

On the matter of this action being a non-representative action and as such, the plaintiffs have no right to institute the same, the learned counsel relies on the case of *Cotter v National Union of Seamen*[12] where it has been held that as a trade union has a legal entity and is governed by its rules, any irregularities alleged to have been committed in the convening and conduct of its meeting, can be regularized by the passing of fresh and effective resolutions. A court of law will not entertain any proceedings to restrain by injunction the doing of an act of the trade union to pass a resolution unless such proceedings are brought by the majority of the members and *in the name of the trade union itself*. Counsel for the plaintiffs, on the other hand, relied strongly on *John v Rees & Ors*[13] where the plaintiff claimed, as representing all members of the Penbrokeshire Divisional Labour Party (except the defendants) and on his own behalf, for certain declarations. This claim was asserted in the plaintiffs' writ. In support of his claim, over 20 affidavits were filed by those who associated themselves with the defendants in suggesting that as a result of the meeting of the Penbrokeshire Division of the Labour Party ('PDLP') held on 6 April 1968 in which 100 members attended, the PDLP had disaffiliated itself from the Labour Party and that a new set of officers, who supported the dissaffiliation, were validly elected to office in PDLP. As a result, these 20 deponents stated in common form that they did not wish to be represented by the plaintiff in the action. There was therefore a division of opinion between the plaintiff and those he claimed to represent. Under the circumstances, Mcgarry J held that the rule (O 15 r 12(1)) as to representative proceedings should be treated as being not a rigid matter of principle but a flexible tool of convenience in the administration of justice, and should be applied, not in any strict or rigourous sense but according to its wide and permissive scope (see p 283). Be that as it may it has, however, been stated in *Markt & Co Ltd v Knight Steamship Co Ltd*[14] that the class of persons sought to be represented must be defined in the writ with sufficient clearness and precision. It may also be necessary to define the persons sought to be represented by reference to the date on which the cause of action arose in respect of which the claim is brought (see *Campbell v Thompson*[15]).

A cursory reading of the plaintiffs' statement of claim is sufficient to convince me that there is nothing in it to indicate that this action was instituted as a representative action. This is clearly shown in para 1 of the

plaintiffs' statement of claim in which the plaintiffs aver that they are members of the PPP and they are chairman and secretary of the Johore State branch of PPP, respectively. In addition to that, the first plaintiff avers that he was and still is the vice-president and the second defendant (this I think should be read as the second plaintiff) was co-opted to the central executive committee of the PPP. Furthermore, prayer (vii) in which the first plaintiff makes a request to be 'appointed to attend to the day to day affairs of the People's Progressive Party of Malaysia under the supervision of the Registrar of Societies or such other person or persons as may be appointed by the said Registrar of Societies' is indicative that both the plaintiffs were in fact taking advantage of this action to urge this court to appoint the first plaintiff as president of PPP to administer the party's affairs. There is no doubt that the first plaintiff being a bankrupt, can no longer rely on the said prayer to ask that he be appointed as administrator of the affairs of PPP nonetheless, in considering the frame of mind of the plaintiffs in instituting this action at the material time, I cannot ignore this prayer. In any event, bearing in mind that the parties are bound by their pleadings, I do not see how it could be said that this action is not in fact the plaintiffs' personal action. To my mind, what the plaintiffs did was merely to utilize their position as members of PPP and their official positions to sustain their standing to sue. Counsel for the plaintiffs, however, argued, inter alia, that a breach of the constitution of PPP is not a personal matter of the officials or its members but of public law. It may well be so and the plaintiffs may well be within their own right as members of PPP to file this suit. But the filing of the suit per se does not change this personal action into a representative action particularly when the plaintiffs themselves do not deem it fit to aver in their statement of claim that they are suing on their own behalf and on behalf of the remaining members of PPP save the 12 members of PPP who are the defendants in this action. The effect of this finding would be this: even assuming that I am prepared to grant the declarations sought for by the plaintiffs, such declarations would not be binding on PPP itself or any of the remaining members of PPP who are not parties to this action.

Even assuming that I am wrong in arriving at the aforesaid finding, there is still another issue raised by counsel for the defendants which I have to consider, namely, whether this court has jurisdiction to grant the declarations prayed for in view of s 16 of the Societies Act 1966 which provides, inter alia, that disputes regarding the proper appointment of the lawful office bearers of the society should be dealt with by the Registrar of Societies. Counsel for the plaintiffs, however, submitted that the issues in this case are matters of public concern and are matters which the Societies Act 1966 regulates and the Registrar has a public duty. This duty in a situation of conflict of interest or legal uncertainty can only be resolved by the guidance of the court's declaration which the plaintiffs are seeking and *they must not be shut out.*

Bearing in mind the discussions stated earlier, it would appear that the dicta of Lord Sterndal MR in *Hanson*'s case[5] attempted to emphasize the vast and apparently unexhausted potentialities of declaratory relief. Be that

A as it may, it is my considered opinion that the potentialities should not, however, be taken to mean that the courts can make declarations on any matter whatsoever. As Joyce J said in *North Eastern Marine Engineering Co v Leeds Forge Co*[16] [at p 328]:

> To the operation of that rule [ie O 25 r 5] there must ... be some limitation. It
B cannot, I think, compel the court to entertain any and every action for a declaration, and it cannot be that a claim for any declaration whatsoever it may be is a good ground of action.

One of those limits is that the jurisdiction of the court to make declaratory orders may be restricted or ousted by statutory provisions giving exclusive
C jurisdiction to another person or tribunal in specified matters. Thus, I Zamir in his book *The Declaratory Judgment* said at p 32:

> The declaratory jurisdiction may, accordingly, be described as follows: within the limits of the general jurisdiction of the courts and *subject to private statutory provisions*, the courts may, in their discretion, make declarations upon any matter whatsoever. (Emphasis added.)

D

It is also mentioned in 1 *The Supreme Court Practice 1988* under O 15/16/4 entitled 'Where jurisdiction exists in other tribunals' that:

> But there is nothing in this rule which enables the court to make a declaration in a matter in which its jurisdiction is excluded by a statute which gives exclusive
E jurisdiction to another tribunal ...

Upon a careful reading of the Societies Act 1966, I am fully satisfied that the legislators of the Societies Act 1966 intended to confer on the Registrar of Societies full power to deal with matters concerning the function and the administration of societies — including the appointment of office bearers of
F societies, as well as disputes arising between members of a society and its office bearers, subject only to the supervisory power of the Minister for the time being charged with the responsibility of the registration of societies.

Now s 16 talks of disputes arising 'among the members or office-bearers of a registered society as a result of which the Registrar is not satisfied of the identity of the persons who have been properly constituted as officer-bearers of
G the society, the Registrar may serve notice ... requiring the society, within one month of the service of such notice to produce to him evidence of the settlement of any such dispute and of the proper appointment of the lawful office-bearers of the society or of the institution of proceedings for the settlement of such dispute'. It is clear to me that this section provides for the Registrar to require the parties to satisfy him, among other things, on *the*
H *proper appointment of the lawful office bearers* of the PPP. If the Registrar is not so satisfied he should give the PPP the required notice directing that PPP should submit to him evidence of the proper appointment of the office bearers of PPP. If such evidence is not forthcoming or if such evidence so produced is insufficient to satisfy him that the appointments of the office
I bearers are properly done according to the rules of the PPP within the specified time, he has power to cancel the registration of PPP. This is, to my mind, a sensible way to settle any dispute of such a nature for no reasonable person would take the risk of being improperly appointed and causing the

registration of the party itself (let alone his post as office bearer) to be dissolved. A

Nobody would gain by such a dissolution. That being the case, this hypothetical person would certainly comply with the notice of the Registrar and take steps to settle the dispute amicably rather than take the risk of having the society dissolved. I should also mention that the said s 16 uses the words 'or of the institution of proceedings of the settlement of such dispute'. To my mind, the institution of proceedings does not mean the instituting of legal proceedings — it merely means the instituting of any act or acts to settle the disputes. If it were otherwise, that sentence in which the said words are used will be out of context with all the other provisions of the Societies Act 1966 which policy is to confine matters regarding the registration, administration, and function of societies, to the Registrar of Societies. B C

For the above reasons, I hold that this court has no jurisdiction to grant the three declarations sought by the plaintiffs in their statement of claim. In any event, even should I have the jurisdiction to make the declarations sought, I would be slow in exercising my discretion to grant the declarations since by virtue of the Societies Act 1966, the proper forum to deal with the issues raised in this action is the Registrar of Societies. In the result, the two consequential prayers, viz: (i) an order to restrain each and every one of the defendants from acting or holding out as office bearers and/or interfering with the affairs and/or from convening any meetings or extraordinary triennial delegates conference of the PPP; and (ii) the day to day affairs of PPP be under the supervision of the Registrar, etc, also cannot be entertained. The disputes set out in this action must be referred to the Registrar of Societies for his necessary action. As there is no longer any relief existing in this action, the writ and the statement of claim herein is rendered nugatory and as such they must be removed from the court file and I so order. On the question of costs, one thing bothers me and that is the delay on the part of the defendants in raising the issues set out in this judgment. They should have raised the said issues if not before the trial of this case at least at the commencement of the trial. Instead, they have caused the plaintiffs to incur unnecessary expenses in proceeding with the trial. For this reason I order each party to bear its own costs. The injunction granted by me to the plaintiffs is hereby revoked. D E F G

To conclude this judgment, I think it is appropriate to mention that Salmon LJ is said to have stated in *Blackburn v A-G*[17] [at p 104] that he deprecated 'litigation the purpose of which is to influence political decisions'. His Lordship appears to hold the view that as a politician, the respondent's remedy in the matter does not lie with the court but with Parliament and the electorate. This view has been cited with approval by our Supreme Court in *Lim Kit Siang*'s case.[11] H

Finally I should also mention that an amendment vide Act 743/90 was made to the Societies Act 1966 by introducing Pt IA entitled 'Provisions applicable to political parties only' and the amendment came into force on 12 January 1990. The amendment has the effect of confining disputes arising from the election of disqualified persons as office bearers of a I

political society within the said party itself. In short, it is for the political party itself to settle such disputes. Although the amendment was made after the institution of this action and is not applicable to this action as it has not been made retrospectively, nonetheless the amendment acknowledges the common sense rule adopted by the court even before the amendment was made, ie that the remedy of a politician involved in a dispute with his fellow member of his party lies not with the court but with the Registrar of Societies or the electorate of his party.

Application dismissed.

Reported by JE Rajasooria